

EXHIBIT B COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 93-177
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections of) MM Docket 92-266
the Cable Television Consumer)
Protection and Competition Act)
of 1992)
Rate Regulation)

Report and Order and Further Notice of Proposed Rulemaking

Adopted: April 1, 1993

Released: May 3, 1993

By the Commission: Commissioner Marshall not participating;
Commissioners Barrett and Duggan issuing
separate statements.

Comment Date: June 17, 1993

Reply Comment Date: July 2, 1993

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of effective competition.²⁰⁵ In addition, we will require franchising authorities to serve copies of their certification requests on cable operators. Such service copies must be sent by first-class mail on or before the date the certification form is filed with the Commission.

(b) Joint Certifications

i. Background

75. In the Notice, we proposed to allow two or more communities served by the same cable system to file a joint certification and exercise joint regulatory jurisdiction.²⁰⁶ We noted that the legislative history contemplates joint regulation.²⁰⁷ We sought comment on whether we should provide incentives for joint regulation or require governmental entities regulating a single economic entity to coordinate their activities. We also asked commenters to address how a cable operator can fulfill the Act's requirement that the operator's rate structure be uniform throughout a geographic area²⁰⁸ if franchising authorities do not coordinate their regulatory activities.

ii. Comments

76. Commenters generally agree that joint certification should be permitted, but not required.²⁰⁹ Municipal states that the advantages of joint regulation are obvious, and no further incentives are necessary.²¹⁰ Cole and

²⁰⁵ NATOA Comments at 25; Appendix D, infra.

²⁰⁶ Notice, 8 FCC Rcd at 516.

²⁰⁷ House Report at 80.

²⁰⁸ Communications Act, § 623(d), 47 U.S.C. § 543(d). See further discussion of Section 623(d) at section II.A.5.a, infra.

²⁰⁹ See, e.g., NATOA Comments at 32; Austin Comments at 29; Cox Comments at 66; Municipal Comments at 55-56. Nashoba argues that communities jointly served by a small system should be required to regulate jointly in order to reduce small system burdens. Nashoba Comments at 114. In light of the explicit statement in the House Report that the legislation should not be interpreted to require exercise of joint regulatory authority, see House Report at 80, we do not believe that we have the authority to require joint regulation in any circumstances. For discussion of small system burdens, see section II.A.5.f, infra.

²¹⁰ Municipal Comments at 55-56.

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Continental, however, argue that in many cases it will not be appropriate. These commenters point out that where communities are served by the same system but their franchises contain different terms and conditions, were awarded in different years, and run for different periods, it would be difficult to exercise joint regulatory authority. Where the initial franchise encompasses multiple communities, however, the exercise of joint regulatory authority would be appropriate.²¹¹

iii. Discussion

77. We will permit, but not require, joint certification for communities served by the same system. We agree with Austin that joint certification and joint regulation may occur regardless of whether the areas covered have uniform rates.²¹² Even where community-specific factors might cause rates to vary, we believe that joint regulation would provide efficiencies to the communities and to the cable operator. We also agree with Austin that joint regulation may take several forms, including arrangements where communities share the costs of data collection and hold joint hearings but make independent rate decisions.²¹³

78. We will also permit joint certification for communities served by different systems, as Austin suggests.²¹⁴ As stated above, joint regulation does not necessarily mean that rates in each franchise area must be uniform. Such joint certification could provide administrative economies to local authorities and to this Commission, which must process certification requests, as well as petitions for denial and revocation of certification. Finally, such joint certifications could ease the regulatory burden on cable operators by providing greater resources for franchising authorities and increasing the efficiency and expertise of local regulation.²¹⁵ The economies

²¹¹ Cole Comments at 17; Continental Comments at 18-19.

²¹² Austin Comments at 29.

²¹³ Austin Comments at 29.

²¹⁴ Austin Comments at 29.

²¹⁵ Although we encourage efficient resolution of rate disputes, we are primarily concerned that the Act's provisions be implemented as faithfully as possible. While joint certifications may make resolution more difficult, as Cole Reply Comments at 13; Continental Reply Comments at 11-12 suggest, we believe that the increased benefits to administration of the Act's explicit framework (certification by the FCC of local authorities, local authorities' regulation of basic service rates) outweigh its

realized by franchising authorities and by cable companies where joint certification and regulation occurs could ultimately be reflected in improved rates and services for cable subscribers.

79. A related issue is whether a state may file a blanket certification on behalf of its franchising authorities. New York State Commission on Cable Television argues that since the legal authority of municipalities to regulate cable television rates is a matter of state law, a state agency with jurisdiction over cable can ensure that the Act's certification standards exist or will be met.²¹⁶ While allowing such blanket certifications would certainly be administratively efficient, we cannot reconcile permitting this procedure with the dictates of the Act. Section 623(a)(3) requires the franchising authority to certify that it fulfills the criteria for certification.²¹⁷ Moreover, the Act contemplates that some franchising authorities may choose not to regulate.²¹⁸ A blanket certification would deny franchising authorities in that state an opportunity to forego rate regulation. However, if a state (e.g. a statewide public utilities commission) is the franchising authority, it obviously would be the entity filing the certification for itself.²¹⁹

(c) Approval of Certification by
the Commission

i. Background

80. In our Notice, we stated that, pursuant to the Cable Act, a certification submitted by a franchising authority to the Commission shall be effective after 30 days unless we find that (1) the authority has adopted or is administering regulations inconsistent with those we prescribe; (2) the authority lacks the legal authority to adopt, or the personnel to administer, the regulations, or (3) interested parties are not

negative effects.

²¹⁶ NYSCCT Comments at 17-18.

²¹⁷ See also SBA Comments at 11 n.17 (stating that Congress rejected amendments to the Act that would have required state utilities commissions to regulate).

²¹⁸ See discussion at section II.A.3.a.(1), supra.

²¹⁹ If the state acts as the franchising authority for unincorporated areas, it would also file the certification as the "franchising authority" for those areas. See NECTA Comments at 18-22 for a discussion of examples of states that hold rate regulatory authority at the state level.

Agenda Item No.

11-3-93

EXHIBIT
COPYORDINANCE NO. 93-120

ORDINANCE CONCERNING REGULATION OF CABLE T.V. RATES; CREATING SECTION 8AA-61.01 OF THE CODE OF METROPOLITAN DADE COUNTY; PROVIDING FOR THE SCOPE OF THE REGULATION IN INCORPORATED AND UNINCORPORATED AREAS; PROVIDING THAT DADE COUNTY SHALL MAKE A RATE DETERMINATION BUT THAT CITIES MAY SET A DIFFERENT RATE FOR THEIR JURISDICTIONS; REQUIRING RATE DETERMINATIONS TO COMPLY WITH APPLICABLE F.C.C. REGULATIONS AND FEDERAL LAW; PROVIDING FOR A NOTICE AND COMMENT PERIOD FOR PROPOSED RATE REGULATION ACTIONS; PROVIDING PROCEDURES TO OBTAIN ADDITIONAL INFORMATION; PROVIDING PROCEDURES TO PROTECT CONFIDENTIALITY OF CERTAIN BUSINESS INFORMATION, WITH AN APPEAL TO THE F.C.C.; PROVIDING DELEGATION TO THE COUNTY MANAGER OF ALL DECISIONS CONCERNING RATE REGULATION, SUBJECT TO AN APPEAL TO THE COUNTY COMMISSION; PROVIDING THAT NOTHING HEREIN SHALL PROHIBIT FURTHER REGULATIONS; AMENDING SECTION 8AA-61 OF THE CODE OF METROPOLITAN DADE COUNTY TO REQUIRE NOTICE OF RATE INCREASES TO INCLUDE THE NAME AND ADDRESS OF THE COUNTY'S CABLE T.V. OFFICE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Federal law now allows local franchising authorities to regulate certain cable television rate and equipment charges, provided that the local franchising authority is certified by the F.C.C. and adopts regulations consistent with those established by the F.C.C.,

WHEREAS, The purpose of this ordinance is to (1) ensure that all consumers in the incorporated and unincorporated areas are protected by cable t.v. rate regulation; and (2) coordinate the regulatory actions of Dade County and the municipalities,

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NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
COMMISSIONERS OF DADE COUNTY, FLORIDA:

Section 1. Section SAA-61.01 of the Code of Metropolitan
Dade County, Florida, is hereby created to read as follows:

Sec. SAA-61.01. RATE REGULATION.

(1) SCOPE OF THIS REGULATION.

(a) Dade County Jurisdiction. This section concerning rate regulation shall apply in incorporated and unincorporated Dade County. Dade County, at its discretion, may decline to exercise jurisdiction in a municipality where: (1) a Licensee's Dade County service area as authorized by Dade County does not extend beyond the corporate limits of the municipality, and the municipality is certified by the F.C.C. and has in place regulations that are consistent with the rate regulations adopted by the F.C.C.; or (2) rate regulation should be left solely to the municipality because the municipality has requested such treatment, cost factors unique to that municipality control the analysis, or the municipality does not participate with the County in sharing costs or information.

(b) Municipal Jurisdiction. Where Dade County has set a rate for a Licensee that has a Dade County license area that includes municipalities, such an included municipality may set a rate within its municipal license area that is different from the Dade County rate, provided that the municipal rate complies with applicable federal rules and regulations. Such municipal rate shall control in the municipal license area. Nothing herein shall prohibit the County, at its discretion, from regulating rates jointly with one or more municipalities.

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(c) Notwithstanding any of the above provisions, in the event that a municipal rate determination or regulation is set aside due to a failure to comply with applicable law, the County's rate determination will apply within that municipality, unless the F.C.C. sets a rate or until the municipality establishes a lawful rate.

(d) This section shall not be construed to create a private cause of action.

- (2) COMPLIANCE WITH F.C.C. REGULATIONS. In regulating any rates as allowed by Federal law, Dade County shall be governed by and shall comply with all controlling F.C.C. regulations and Federal Statutes.
- (3) NOTICE AND COMMENT. Upon receipt of the cable operator's submission describing its rates or proposed rates, Dade County shall publish notice in a newspaper of general circulation in Dade County, requesting written comments from the public or any interested person. The notice shall name the Licensee, announce that the County is conducting a review of the Licensee's schedule of rates or proposed rate increase for the basic service tier and accompanying equipment, generally describe the effected service area, establish a closing date, and provide an address where the comments will be sent. The comment period shall be open for no less than 7 calendar days after publication. Dade County shall review and consider such comments in making any determination under this section. When a cable operator submits rates for review, it shall publish notice to its subscribers, either at least once in its bill or ten times over its cable system at different times throughout the broadcast day, that a rate review is taking place, comments are requested, and the name and address of the County's Office designated to handle cable television inquiries.

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- (4) **ADDITIONAL INFORMATION** At any point during the review process, Dade County, at its discretion, may (a) hold public hearings provided that 48 hours prior written notice is sent to the cable operator and any municipality within the license area and 48 hours prior published notice is provided the public; (b) seek additional written comments; (c) require the Licensee to produce additional information, including but not limited to certified financial statements, and all worksheets, working papers, ledgers, receipts, and all other financial and accounting records underlying the Licensee's submission, the calculations used in the submission, and the Licensee's finances and accounts necessary to verify the accuracy of the submission; (d) require the Licensee to allow Dade County and its agents to audit and review the the Licensee's books and accounts including but not limited to the information described in subsection (c) above; and (e) obtain relevant information from other sources.
- (5) **CONFIDENTIAL BUSINESS INFORMATION.** If the Licensee believes that any of the additional information ordered produced is confidential business information in need of protection from disclosure, the Licensee must request confidentially and make a showing, by a predominance of the evidence, that non-disclosure is consistent with provisions of the Federal Freedom of Information Act, 5 U.S.C. section 552. If Dade County denies the request for confidentiality, the operator must appeal to the F.C.C. within five working days. In such cases, the operator shall provide the requested material, but release of the information to the public will be stayed pending review.
- (6) **DELEGATION TO COUNTY MANAGER.** Subject to appeals to the County Commission, the County Manager is delegated the authority to conduct all proceedings, and issue any final or interim orders provided for in this section.

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- (7) **APPEALS.** Any decision of the County Manager may be appealed to the County Commission pursuant to the provisions of section 8AA-76, Dade County Code. The filing of an appeal of any interim, non-final determination shall not stay the information-gathering proceedings or form a basis for the Licensee to refuse to disclose information.
- (8) **FURTHER REGULATIONS.** Nothing herein shall be construed to limit the right of Dade County to modify, amend, or add to these regulations in order to comply with applicable law or to protect the interests of Licensees or subscribers.

Section 2. Section 8AA-61 of the Code of Metropolitan Dade County is amended as follows:

(a) The licensee must give thirty (30) days prior written notice to the County Manager and all affected subscribers of any pricing changes or additional charges, excluding temporary marketing and sales discounts or offers. Such notice shall include the name and address of the County's Office designated to review the rate increase. The licensee may reduce the price at any time.

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Metropolitan Dade County, Florida. The sections of this ordinance may be renumbered or relabeled to accomplish such

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intention, and the word "ordinance" may be changed to "section,"
"article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10)
days after the date of enactment.

PASSED AND ADOPTED: NOV 03 1993

Approved by County Attorney as
to form and legal sufficiency.

Prepared by:

RA6
TWL



MEMOR

EXHIBIT

COPY

Hon. Chairperson and Members
Board of County Commissioners

FROM:

Joaquin G. Avino, P.E., P.L.S.
County Manager

County Code to
Create Procedures
for Regulation
of Basic Cable
Service Rates

RECOMMENDATION

It is recommended that the Board adopt the attached ordinance which establishes procedures for regulating basic cable television service and equipment rates. Local adoption of such procedures is required to exercise our authority in this area.

BACKGROUND

This substitute ordinance mainly clarifies language, deletes unnecessary phrases, adds captions and a whereas clause, reorders material and clarifies background information. The one substantive change is minimal. The original ordinance required a municipality to have a rational basis for setting a rate different from Dade County's rate, where the substitute requires that the municipality comply with federal law when doing so.

On July 13, 1993, the Board authorized our filing with the FCC to become certified to regulate basic cable rates. The required forms were filed and become effective in mid-October.

Local procedures should be finalized before the federal rate freeze expires on November 15th. After that date, cable companies will submit their rate schedules for review. Local review is restricted to basic service and equipment, and certain fees.

Cable companies recently implemented rate changes to try and comply with the new federal rate guidelines. Further reductions, if any are warranted, will be limited to those permitted by the FCC formulas.

The attached proposed ordinance provides the following:

- Compliance with FCC rules and regulations;
- Participation by interested parties;
- Delegation of authority to the County Manager to issue final rate orders;
- Appeal of administrative decisions to the Board;
- Recognition of a city's right to regulate rates;
- Enabling language to allow joint regulation with cities.

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Under Dade County's two-tier licensing system, a cable operator must obtain a license from both the County and any city in which it operates. Commencing in July, staff initiated presentations to the Joint Liaison to review issues including the city/county relationship in view of overlapping authority. Subsequently, meetings were held with a sub-committee of the Dade League that was formed to consider these issues. Staff also met with various city officials and attorneys.

The resulting ordinance retains the County's authority to regulate cable rates throughout Dade County's license areas and concurrently recognizes a city's right to regulate rates. Dade County's rate determination will apply in any municipality that does not regulate rates, or whose rate has been set aside due to nonconformance with applicable federal law.

This item is being submitted for the October 26, 1993 Community and Economic Development and Agriculture Committee meeting.

ECONOMIC IMPACT ANALYSIS:

Relevant economic factors are:

The economic impact of the ordinance on the County's budget.

Revenues: County license fees, which are a percentage of cable revenues, will decline with reductions in company revenues. The anticipated impact of \$300,000, largely due to rate changes made prior to local review, is accounted for in the FY 93/94 budget. Impact may be mitigated as cable companies add new subscribers and develop other revenue streams.

Expenses: Should rate review occur using only internal resources, no out-of-pocket expense is anticipated. Should rate review require external support, current projections are that expenses will not exceed \$50,000. Such costs will be affected by the complexity of the review and the extent to which external resources are needed. Opportunities may exist to share certain expenses with municipalities.

The economic impact of the ordinance on the private sector.

Local regulation may reduce cable company revenues beyond the reductions already incurred as a result of rate changes on September 1, 1993. The impact may be mitigated through adding new subscribers and developing other revenue streams.

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The costs and benefits, both direct and indirect, of establishing and maintaining the program set forth in the ordinance.

Benefits: Consumers may enjoy additional rate reductions and protection on a going forward basis.

Attachment

Enforcement Problems May Help Cable Systems Elude Rate Rules

Small Cities Are Reluctant to Become Regulators

By EDMUND L. ANDREWS

Special to The New York Times

WASHINGTON, Nov. 10 — Thousands of cable television systems across the country may escape new Federal price regulations because many cities and towns around the country are afraid that enforcing the rules will create more problems than it solves.

Alarmed by the possibility that cable operators in many cities might be free to raise prices as high as they want, the Federal Communications Commission decided today to extend a temporary revenue freeze on cable companies for three months to give cities more time to study the new regulations.

The problem is the latest of several recent signs that the new cable law is not delivering the consumer benefits that Congress envisioned in October 1992 when it passed the legislation over the veto of President George Bush. Last month, for example, a preliminary study by the F.C.C. found that about a third of cable subscribers have seen their rates increase since the new pricing regulations went into place.

Under the Federal law that took effect last spring, local governments were given the primary responsibility for regulating cable prices under guidelines established by the F.C.C. Cities and towns must first apply for certification from the F.C.C., which entails filling out a one-page form.

Yet so far, agency officials say only about half the 11,000 communities have sought certification. The problem is most widespread among small towns and cities, many experts said, because many fear the potential complexity and administrative burden will overwhelm their resources. But other experts say the reluctance stems primarily from the cable companies, which

have waged a concerted effort in many cities to persuade local officials against becoming regulators.

"Many of them are scared," said Barry Orton, a professor of telecommunications at the University of Wisconsin and a consultant to local cable authorities in that state. "Some fear it's going to cost them money. Some are against it on principle. And some have been talked out of it by cable companies."

As a group, officials from medium and large cities were among the staunchest advocates of the new law as it progressed through Congress. And most big cities, including New York, have been quick to seek the F.C.C. authority to regulate cable prices.

Burdensome Regulations

But local officials in some smaller municipalities apparently find the Federal rules too burdensome. "Once you get tied up with the Feds, you can end up running the cable system yourself," said Marvin Thompson, the president of the City Council in Rice Lake, Wis., a town of 8,000 people. The Council decided not to seek F.C.C. certification for regulating cable. "We just decided we didn't know enough to make a decision," he said.

The reluctance of local governments marks the latest strange twist to the saga of cable rate regulation. In overriding President Bush's veto, Congress passed what was seen as a tough law designed to address the consumer outcry over soaring cable prices, which were deregulated in 1987. Since that year, cable rates have risen at more than twice the rate of inflation, in part because all but a handful of cable sys-

Continued on Page C18, Column 5

New Jersey Governor-Elect Denies Aide's Claim of Campaign Payoffs

EXPORT



The United States Army has begun the complicated process of wrapping tanks for storage aboard ships, waited to be transported to Germany.

The Roar of Tanks Fade Where G.I.'s Guarded E

By CRAIG R. WHITNEY

Special to The New York Times

ERLANGEN, Germany — Where the largest tank brigade in the United States Army was once stationed, there is now only a vast, empty parking lot, barracks and a vacant 8,000-acre training area that the Second Brigade of the Third Infantry Division will soon turn back to the Germans.

All over Germany, the signs of Americans going home are unmistakable.

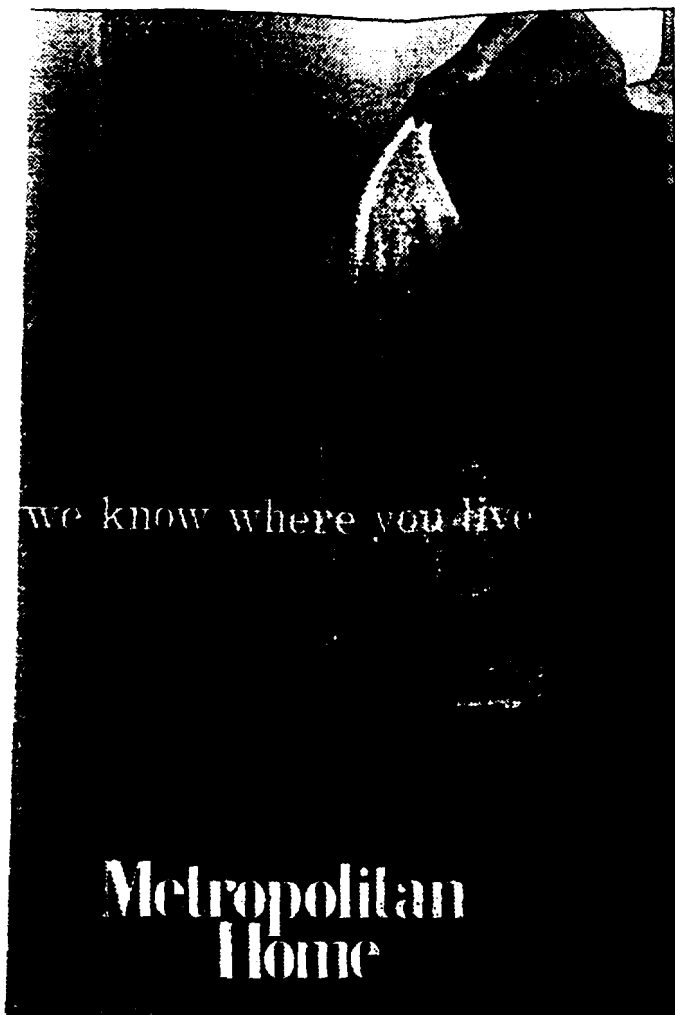
In this university town, the civilian authorities seem happy to get back the prime real estate occupied by Ferris Barracks, but in Mainz, Frankfurt, and Kaiserslautern, many Germans have lost their jobs. Woods grow in parade

switch schools three want to get stabilized, with the job."

The brigade commander, Richard Wallace, was about the task of deactivating the unit.

"The good news is that the political situation has changed that we don't need so many armored vehicles and tanks," he said. "The bad news is that this brigade was sent here causing its deactivation."

A Peacekeeping Unit
For the units that



Arnell/Bickford

placements for Metropolitan Home magazine are intended "to offset the ambiguity of their images may the impact of the campaign."

Addenda

President Hired Saatchi Agency

Mr. Jeary, formerly the chairman of Citron Haligman Bess San Francisco, yesterday took position at Saatchi & Partners in San Francisco, after months working on his

Mr. Jeary, 37, was named president of the agency, succeeding Michael who was promoted to the chairman, which was left to Ron Colnett retired earlier. Mr. Jeary continues as active.

Boston Globe Review Narrowed to 6 Shops

The Boston Globe said yesterday that it had narrowed the review on its estimated \$4 million account to six semifinalists from a list of 16 contenders. The account had been at Hill, Holliday, Connors, Cosmopolis in Boston for 15 years, until the company and agency decided to part ways last month.

The semifinalists were identified as: Arnold Fortuna Lawner & Cabot; Doyle Advertising; Clarke Goward Fitts Matteson; Houston Effler & Partners; Ingalls, Quinn & Johnson, all of Boston, and Mullen Advertising of Wrentham, Mass.

Many Cable Companies May Elude Rate Rules

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terms face no head-to-head competition.

But the new regulations have generated continuing controversy as the F.C.C. has tried to codify Congress's intent. F.C.C. officials initially predicted that the regulations would lead to a \$1 billion annual rate reduction nationwide. Instead, prices for at least a third of all customers have gone up rather than down, and the biggest rate reductions have gone to relatively affluent customers who buy extra cable outlets and remote control devices. People who subscribe to the most basic packages of service have often seen prices go up.

Few people dispute that the new rate regulations are complicated. The rate rules alone are more than 400 pages long, and the rules on technical and programming issues run hundreds of pages more.

The F.C.C. tried to simplify the rate rules by establishing a set of "benchmark" prices for different kinds of cable systems, a move designed to avoid the endless analyses used in telephone rate regulation to determine a company's costs and allow a reasonable profit. But a city must still wade through a long list of calculations, juggling the number of channels and the prices for installations, extra outlets and remote control devices.

Process of Appeal

Beyond that, a cable company is allowed to appeal the benchmark prices by asking for a separate proceeding to explain its costs. While the F.C.C. and the courts ultimately must decide such appeals, the city is responsible for seeing the case through the process.

"You've got to think about this in the context that there are a lot of very small towns and counties with limited resources who have always been very suspicious of the Federal Government," said William F. Squadron, the Commissioner of Telecommunications and Energy for New York City. Mr. Squadron, who is also the president of a national association of telecommunications administrators, added that many cable companies had worked hard to foster those concerns among local officials.

For example, Marcus Cable, which

is based in Dallas, in July wrote to the local officials in small cities in Wisconsin where it has cable systems, warning that the Federal rules would create a nightmare. "This hodgepodge of rules, requirements, edicts and dictates is, in a word, ludicrous," wrote Jeffrey Marcus, the president of the company. "The losers are the cable customers, the municipalities, and the cable companies."

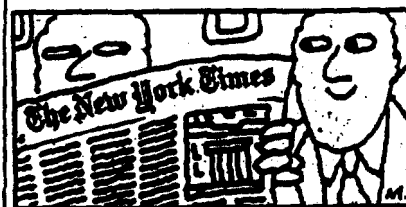
'Step Up to the Plate'

Despite such pressures, some consumer advocates said municipalities bore a good measure of responsibility for delaying the implementation of the new cable rules. "They've really got to step up to the plate and do something," said Brad Stillman, legislative counsel for the Consumer Federation of America, which pushed hard for the cable law last year. "I guess I'm surprised. The cities had been pretty gung-ho on enabling this legislation. This is somewhat troublesome."

To give municipalities more time to act, the F.C.C. voted 2 to 1 today to extend for three more months a freeze on cable revenues that was to end on Monday. "We want to give local authorities and consumers enough time to trigger the regulatory process," said Maureen O'Connell, a legal adviser to the F.C.C.'s acting chairman, James H. Quello, who was joined in the vote by Commissioner Ervin S. Duggan.

But Commissioner Andrew Barrett issued a blistering dissent, saying the F.C.C. should have also pushed back the date when cable operators were required to respond to consumer complaints in accordance with the new law. Mr. Barrett argued that the commission was effectively forcing both cable companies and municipalities to begin acting on rules that could still be full of flaws and need revision.

"This order," he wrote, "continues the litany of regulatory confusion."



EXHIBIT

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from rates that exceed the rates that would be charged if such a system were subject to effective competition."¹⁶⁷ Based on the broad language of Section 623(b), and the fundamental goal of the rate regulation provisions to protect subscribers from excessive rates, we conclude that our jurisdiction over basic rates is not limited to those instances when a franchising authority's certification has been denied or revoked.

54. While we are mindful of the responsibility which the Act places on us, we believe that in order to carry out this obligation, we must coordinate and cooperate with local franchising authorities. Local franchising authorities are envisioned as the primary regulators of basic service rates under the Act's framework. We do not, therefore, assume jurisdiction at this time in all cases where a franchising authority does not apply for certification. We are particularly reluctant to override a locality's decision not to regulate rates. Under the interpretation urged upon us by certain commenters, the Commission would have to regulate even if the franchising authority opposes rate regulation. This would lead to potential local/federal conflicts, and seems counter to Congress' desire to vest in local franchising authorities the primary authority to regulate basic rates.

55. We are concerned, however, about situations where a franchising authority chooses not to file a certification because it knows that it cannot meet certification standards,¹⁶⁸ particularly when it does not have the resources to administer rate regulation or the legal authority to act, but nevertheless believes that rates should be regulated. However, in providing that franchising authorities lacking the resources to regulate can affirmatively request FCC regulation of basic cable rates, we will presume that franchising authorities receiving franchise fees have the resources to regulate. Any such franchising authority seeking to have the Commission exercise jurisdiction over basic rates will be required to rebut this presumption with evidence showing why the proceeds of the franchise fees it obtains cannot be used to cover the cost of rate regulation.¹⁶⁹

¹⁶⁷ Conference Report at 62.

¹⁶⁸ Consistent with the statutory language, if such a franchising authority files a certification that is denied or revoked, we will regulate the basic service rates of the cable system if it is not subject to effective competition until the franchising authority cures the certification defect.

¹⁶⁹ We previously required an analogous showing by a franchising authority to justify charging a franchise fee in excess of three percent. The franchising authority was required to show, inter alia, that the increase would be necessary to further the

The franchising authority must present to the Commission a detailed explanation of its regulatory program. This showing should demonstrate that its franchise fees are insufficient to fund the additional activities required to administer basic rate regulation. If the Commission determines that the franchise fees cannot reasonably be expected to cover the present regulatory program, as well as basic rate regulation, it will assume jurisdiction.

56. Similarly, where a local franchising authority notifies us that it lacks the legal authority to regulate basic service rates, we will assume jurisdiction until the local government secures such authority. Local governments requesting us to assume jurisdiction on this ground should submit with their request a statement detailing the nature of the legal infirmity. If an otherwise qualified franchising authority does not meet the other certification requirements, i.e. that its rate regulation rules are not yet consistent with ours (Section 623(a)(3)(A)), or its procedural regulations do not provide interested parties an opportunity to comment (Section 623(a)(3)(C)), we will automatically assume jurisdiction in the former case we will permit the authority an opportunity to cure the defect before assuming jurisdiction in the later case. See infra Section II.A.3.a(2)(d). We presume that otherwise qualified authorities will readily be able to do so, but, as required by Section 623(a)(6), we will assume jurisdiction until the franchising authority cures the defect.

(b) Preemption Issues

i. Background

57. Section 623(a)(3)(B) of the Communications Act, as amended, requires that a franchising authority be able legally to adopt regulations consistent with those we establish for basic cable rate regulation. The Notice sought comment on whether a

franchise authority's planned local regulatory programs... 47 C.F.R. Section 76.31(a), 76.31(b) (1984). Application of Total Communications of Irving, Inc., FCC 74-157, 45 FCC 2d 525 (1974) (purpose of the showing required by Section 76.31(b) was to allow the Commission to obtain specific information on how a franchise fee would be expended on a proposed local regulatory program); General Television of Minnesota, Inc., FCC 74-578, 47 FCC 2d 60 (1974) (franchise authority sufficiently showed the excess fee to be reasonable, in light of the community's extensive supervisory program, setting forth substantive details on its local Cable Television Commission, the yearly operational budget for the local cable commission, including an itemized list of operational expenses, as well as a ten-year projection of its gross subscriber revenues and resultant franchise fee payments).

EXHIBIT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93-145

In the Matter of)

Implementation of Section 8 of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)

MM Docket No. 92-263

Consumer Protection and Customer)
Service)

REPORT & ORDER

Adopted: March 11, 1993

Released: April 7, 1993

By the Commission: Commissioner Marshall not participating.

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I. Introduction

1. By this Report & Order, the Commission implements Section 632 of the Communications Act of 1934 (47 U.S.C. Sec. 632) ("Communications Act"), as amended by Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992" or "1992 Act").¹ That provision governs the establishment, implementation and enforcement of customer service standards for cable operators nationwide. In the Notice of Proposed Rule Making in this proceeding, the Commission solicited public comment on issues concerning the implementation of Section 8 of the Cable Act of 1992. See Notice of Proposed Rule Making in MM Docket No. 92-263, 7 FCC Rcd 8641 (1992) ("Notice"). A list of those parties commenting in this proceeding is attached hereto as "Appendix A."

2. Section 632 of the Communications Act, as amended by Section 8 of the Cable Act of 1992, provides:

(a) **FRANCHISING AUTHORITY ENFORCEMENT.**- A franchising authority may establish and enforce-

(1) customer service requirements of the cable operator, and

(2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator.

(b) **COMMISSION STANDARDS.**- The Commission shall, within 180 days of enactment of the Cable [Act of 1992], establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing-

(1) cable system office hours and telephone availability;

(2) installations, outages, and service calls; and

(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

¹ Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, Section 8, 106 Stat. 1460 (1992).

precise mechanism by which customer service requirements are to be adopted. However, we believe that the implementation scheme most consonant with the language of the statute and Congress' intent is for this Commission to establish self-executing standards which set forth the customer service obligations of cable operators nationwide. Section 632(b) provides that the Commission "shall . . . establish standards by which cable operators may fulfill their customer service requirements" (emphasis added). Although Section 632(a) states that a local franchise authority also "may establish and enforce" customer service requirements, we believe that this provision should be read in conjunction with Section 632(c), which expressly permits local governments to adopt standards exceeding those established by the Commission either with the consent of the cable operator or by enactment of an appropriate law or regulation. Thus, reading all three provisions together, we conclude that the Commission is required to establish baseline customer service standards on which local governments may rely to ensure that the cable systems they regulate provide an adequate level of customer service to cable subscribers. At the same time, Sections 632(a) and (c) preserve the ability of local governments to exceed the FCC standards through the franchising or regulatory process when additional obligations are deemed necessary.¹⁵ Accordingly, we agree with NATOA, most local governments and other commenters that the customer service standards we establish today should be self-executing.

11. We recognize the concerns of some commenters regarding the difficulty of promulgating uniform national standards that will govern the customer service obligations of cable systems nationwide. We particularly acknowledge our concern regarding smaller cable systems that have limited subscriber bases, since the costs of imposing the FCC-established standards on these systems may have a significant impact on rates. As discussed in Section III(B) below, however, we believe that we have developed customer service standards that are both reasonable and sufficiently flexible to accommodate the range of cable operations to which they will be applied. With respect to the issue of adopting a flat exemption for small cable systems, we observe that there is little consensus among the commenting

¹⁵ The legislative history supports this interpretation. The customer service provision adopted by Congress is virtually identical to the provision in H.R. 4850. The House Committee Report on that bill states that the Commission shall promulgate "minimum Federal standards for customer service and consumer protection." House Report at 37. See also Statement of Chairman John Dingell, 138 Cong. Rec. H6500 (daily ed. July 23, 1992) (statute "requires the FCC to come up with tough customer service standards -- and provides for effective enforcement"); Statement of Chairman Edward Markey, 138 Cong. Rec. E1034 (daily ed. April 10, 1992) (draft legislation would "require the FCC to establish universal customer service standards").

parties as to whether such an exemption is needed¹⁶ and, if so, how it should be designed.¹⁷ To the extent that the flexibility in our standards may not accommodate some small systems without an undue adverse impact to subscribers, we believe that the better approach is to encourage small systems to seek waivers of our standards should they conclude that one or more of those standards is too onerous.¹⁸ In this regard, we will consider small systems to be those with 1,000 or fewer subscribers, since it is these cable systems that we previously have recognized face special difficulties in meeting Federal regulatory requirements.¹⁹

12. Should local governments wish to exceed the customer service standards we adopt today, they may do so through the franchising process or otherwise with the consent of the cable

¹⁶ Commenting parties ranged from no blanket exemptions based on numbers of subscribers (See, e.g., the City of St. Louis reply comments at 18) to total or partial service exemptions for systems under 15,000 subscribers (Viacom comments at 9-11); those under 10,000 (NCTA comments at 32-33); those under 1,000 (Coalition comments at 2-3); or those with gross revenues below 7.5 million dollars (Consortium comments at 2-4). In addition, some commenters would permit waiver or exemption from service requirements only for wholly owned, stand-alone systems. See, e.g., NATOA comments at 16-17. But see CATA reply comments at 3-4 (distinctions between stand-alone and multiple operator systems inappropriate because service requirements must make financial sense on community-by-community basis).

¹⁷ Commenting parties range in their suggestions from the FCC acting on waiver requests made by franchise authorities (MFA comments at 13-14) or system operators (NCTA reply comments at 10), to franchising authorities implementing their own small system standards (New York State Commission on Cable Television ("NYSCCT") comments at 11-12), to exemptions by mutual agreement of the franchise authority and the cable operator (National Telephone Cooperative Association comments at 4-5). In addition, NCTA requests that the Commission recognize that smaller systems may be less able to comply with all of the Federal standards, and urge franchising authorities to take that into account when developing and applying customer service standards. NCTA comments at 32-33.

¹⁸ When submitting such waiver requests, small cable operators should attach the views of the local franchising authority on the request and provide a detailed explanation as to the costs of compliance for each of the specific Federal standards for which a waiver is sought. In granting waiver requests, our preference clearly will be to approve an alternate standard rather than waive a standard altogether. Therefore, the system seeking a waiver of our standards should propose any alternative standard(s) with which it could comply in the event the request is favorably considered. The alternative standard(s) proposed should be crafted to best meet, under the circumstances, the statutory objectives and should track, as best as possible, the FCC-established standards. In addition, the waiver request should, where possible, include a projected date when full compliance with the FCC standard can be achieved.

¹⁹ See, e.g., Cable Television Technical and Operational Requirements, 7 FCC Rcd 2021, 2033-34, recon. granted on other grounds, 7 FCC Rcd 8676 (1992).

operator, or they may enact an appropriate law or regulation.²⁰ In this latter regard, we find that Section 632(c) of the Communications Act does not prevent the enactment and enforcement of any State or municipal law or regulation concerning consumer protection or customer service which imposes service requirements that exceed, or involve matters not addressed by, the Federal standards. We note that a number of commenters assert that any such laws must be generally applicable to businesses in the community -- i.e., they cannot be "cable specific."²¹ In support of this interpretation, these parties claim that Congress did not intend for local governments to be able to "unilaterally" impose stricter standards on cable operators. We disagree. There is nothing in the statutory language or legislative history which suggests that Congress meant to limit consumer protection or customer service laws in this manner. Moreover, franchise authorities will not be able to enact consumer protection or customer service laws or regulations without following the procedural requirements attendant to the political process. Cable operators will thus have ample opportunity to present their views and all relevant information to the local government and the public before any such State or municipal regulation is passed.

C. Enforcement of Customer Service Standards

13. In the Notice, we tentatively concluded that, following the historical pattern that customer service standards have not been imposed or enforced at the Federal level, the Cable Act of 1992 provides the Commission with no role in the enforcement of its own or any other customer service standards.²² Interested parties were asked to comment on whether the Commission should have any role with regard to customer service once it establishes the Federal standards.²³

14. Most commenters believe that Section 632 does not provide a direct or active role for the FCC in the enforcement of customer service obligations. Local governments generally suggest that local enforcement by franchise authorities is the

²⁰ Because there is no indication that Congress intended for more stringent requirements already included in existing franchise agreements to be relaxed as a result of our actions today, such pre-existing franchise terms will be grandfathered through the end of the franchise term.

²¹ See note 11, supra.

²² 7 FCC Rcd at 8642, para. 4.

²³ Id. at 8643, para. 7.

the consent of the affected cable operator; pursuant to applicable State or municipal consumer protection or customer service law or regulation; or pursuant to the franchising process.

21. We also believe that it is unnecessary for this Commission to establish specific customer service reporting requirements or refund or penalty guidelines applicable to all cable operators nationwide. In this regard, some local governments and cable operators appear to be satisfied with various customer service enforcement mechanisms already in place. Moreover, there is nothing in the record to indicate that State or municipal consumer protection or customer service laws or regulations are inappropriate to enforce customer service requirements; in fact, such laws are often the traditional method of local enforcement actions. In contrast, adoption of Federal enforcement standards could preempt local enforcement mechanisms and hamper effective local enforcement of customer service requirements. Similarly, and based on the record before us, we do not believe that it is appropriate for the Commission to establish specific, universally applicable remedies or penalties for operators that do not comply with their customer service obligations. Local governments should be free to avail themselves of reasonable remedies to assure compliance and fairness to all parties. Such remedies could include, for example, ordering credits or refunds to the system's subscribers.⁴⁴ Local governments are likewise free to pursue nonmonetary forms of relief to assure customer satisfaction including, but not limited to, local actions to compel specific performance or performance evaluation at franchise renewal. We would expect that overall system-wide compliance based on aggregate performance will be a fundamental concern to franchise authorities, but we do not believe it is appropriate to preclude local resolution of individual subscriber complaints that cannot be resolved between the cable operator and its customer.⁴⁵

D. Effective Date of Customer Service Standards

22. In the Notice, we tentatively concluded that it is unlikely that the Congress intended for no changes in customer service requirements to occur prior to the expiration of each

⁴⁴ See House Report at 105.

⁴⁵ In this regard, we believe that it is unnecessary to require cable operators to disclose to franchise authorities specific information regarding individual subscriber complaints as requested by NATOA. If a complaint to a cable operator cannot be resolved to a customer's satisfaction, a franchise authority is not precluded from considering individual cases brought to its attention, and may seek that information necessary to resolve such matters.

EXHIBIT

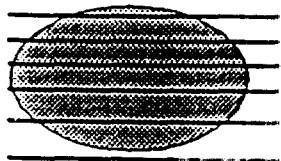
COPY

Metro-Dade County

Cable Television

Ordinance

Consumer Services Department
Office of Cable Television Coordination
140 West Flagler Street, Room 901
Miami, Florida 33130



MODE

CHANNEL

POWER

MEMBER

VOLUME

Control Devices (FDOT) or any requirements of the Public Works Department to protect all members of the public having occasion to use the portion of the streets involved or adjacent property.

(b) Licensee shall at all times employ due care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. All structures and all lines, equipment and connections in, over, under and upon the streets of the County wherever situated or located shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(Ord. No. 90-73, § 1, 7-24-90)

Sec. 8AA-38. General standards, signal standards.

(a) The systems shall pass standard color television and FM signals without abnormal degradation. The system must be capable of delivering all National Television Systems Committee (NTSC) color and monochrome standard signals and designed to provide picture quality of TASC grade 2 or better and superior reliability.

(b) All new construction, rebuilds and upgrades shall be designed and spaced to have a capacity no less than four hundred fifty (450) megahertz.

(c) All television signals transmitted on a cable system must include any closed circuit captioning information for the hearing impaired that is available to the licensee.

(Ord. No. 90-73, § 1, 7-24-90)

Sec. 8AA-39. Technical standards.

(a) CATV systems shall be installed and maintained in accordance with FCC technical specifications, all State and local regulations, regulations and industry standards as reflected in the Recommended Practices For Measurements On Cablevision Systems, published by the National Cable Television Association.

(b) Any antenna structure used in the cable system shall comply with all construction, marking and lighting requirements of federal,

State or local laws and accepted industry standards.

(c) All construction, installation, grounding, and maintenance shall comply with the current versions of the National Electrical Safety Code, the National Electrical Code, and the Bell System Code of Pole Line Construction.

(d) Systems shall be maintained in such a manner as to prevent signal leakage from the facilities in excess of the limits specified in applicable rules and regulations of the FCC. The licensee may disconnect any person who, in the licensee's judgment, is contributing to a signal leakage problem.

(e) Underground construction in streets shall be of such quality as to assure continuity of service without the necessity of frequent street or pavement cutting and shall contain a self-sealing device to insure all such cables against leakage.

(f) All cables and wires shall be installed, where possible, parallel with electric and telephone lines.

(g) If the federal law preempting County regulation of technical standards is repealed, any technical standards imposed by the County shall be no stricter than the repealed federal standards or generally accepted standards in the cable television industry, whichever are greater.

(Ord. No. 90-73, § 1, 7-24-90; Ord. No. 92-97, § 6, 9-15-92)

Sec. 8AA-40. Inspection and performance tests.

(a) The County shall have the right to make such inspections as it shall find necessary to insure compliance with terms of this license and other pertinent provisions of law. The County shall have the right to require the licensee to provide and keep accurate calibrated test equipment immediately available for use in the County for the testing of all service and operational standards in this chapter and the licensee shall conduct such tests as requested by the County in order to establish the level of performance of the system.

(b) The licensee shall advise the County when a proof of performance test is scheduled so that the County may have an observer present. The